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Tyubay A.V., applicant
for the first (bachelor's) level of higher education,
National Aviation University, Kyiv, Ukraine
Scientific advisor: Filinowych V.V., PhD in Law, associate professor

PARTICULARS OF FORMING A POWER OF ATTORNEY BY CITIZENS OF UKRAINE ABROAD

Execution of transactions by third parties by power of attorney is the most common type of representation of interests. According to the third part of Art. 244 of the Civil Code of Ukraine, a power of attorney is a written document issued by one person to another person for representation before third parties. A power of attorney to perform a deed by a representative can be granted by the person represented (the principal) directly to a third party [5].

Among ordinary citizens, there is an opinion that only a notary is authorized to certify powers of attorney, however, in accordance with the provisions of Art. 245 of the Civil Code of Ukraine, depending on the circumstances, the list of such subjects is much wider [5]. Today, a large part of Ukrainian citizens found themselves abroad without the possibility of returning to the Motherland. At the same time, the need to carry out transactions on the territory of Ukraine remained, therefore the issue of issuing powers of attorney is extremely urgent.

It is possible to issue a power of attorney abroad in two ways: 1) apply to the consular office of Ukraine; 2) contact a local notary. Both options have a number of advantages and disadvantages.

The performance of notarial acts by consuls is determined by the Law of Ukraine «On Notaries», the Regulation on the procedure for performing

notarial acts in diplomatic missions and consular institutions of Ukraine approved by the Order of the Ministry of Justice of Ukraine dated 27.12.2004 No. 142/5/310, the Consular Statute of Ukraine and other legal acts of Ukraine. A power of attorney drawn up at a consular institution does not require any additional actions and becomes valid on the territory of Ukraine automatically, which is a key advantage. Today, the biggest drawback of this method is huge queues, sometimes lasting several months, as well as the impossibility of Ukrainian citizens to come to the institution.

In the case of applying to a local notary, it should be remembered that according to Art. 13 of the Law of Ukraine «On Private International Law», documents issued by authorized bodies of foreign states in the established form are recognized as valid in Ukraine in the event of their legalization, unless otherwise provided by law or an international treaty of Ukraine [4].

On December 22, 2003, the Convention Abolishing the Requirement of Legalization for Foreign Public Documents («Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents») entered into force in Ukraine, according to which the only requirement can be the affixing of an apostille stamp (Article 3). That is why it is necessary to find out whether the specified Convention has been ratified by the state in which the citizen of Ukraine wishes to issue a power of attorney.

At the same time, if the legislation of the country in which the document will be presented or an international agreement between the parties establishes a simpler method of legalization, then affixing an apostille cannot be required [3].

Thus, on August 14, 1994, the Agreement between Ukraine and the Republic of Poland on legal assistance and legal relations in civil and criminal matters (hereinafter - the Agreement) entered into force. As can be seen from the analysis of the provisions of Art. 15 of the Agreement, a document prepared or certified by an authorized body of one of the Contracting Parties, sealed with a seal and the signature of an authorized person has legal force in the territory of the other Contracting Party and does not require additional certification, in particular, affixing an apostille [2].

It is possible to issue a power of attorney at a Polish notary in Polish and Ukrainian. However, it should be remembered that in the second case, the notary is not responsible for the content of the text contained in the power of attorney, but only certifies the authenticity of the person's signature [1]. Despite the fact that the text of the power of attorney is written in Ukrainian, the notary's certification inscription is written in Polish. That is why, in practice, in order to use a power of attorney in Ukraine, it is necessary to carry out an official translation of the notary's certification inscription, as well as to notarize it. The specified procedure should not be confused with the legalization of the document, because in this case the translation is certified, and not the entire document in its entirety.

In the case of only certifying a signature, there is a risk that officials of

state bodies on the territory of Ukraine will not accept such a power of attorney to perform certain actions, so we can also talk about the role of the human factor here.

If there is no agreement between the contracting states that simplifies the legalization of documents, then after certifying the signature, an apostille stamp is affixed.

The Annex to the Convention provides a sample of the apostille with an indication of its mandatory details [3]. It is worth noting that the text of the apostille can be written in the official language of the body that affixes it, but the title «Apostille (Convention de la Haye du 5 octobre 1961)» is written exclusively in French (Article 4 of the Convention). Thus, the apostille stamp itself can be printed, pasted, etc., the main condition is to meet the requirements established by the Convention and the legislation where the apostille is affixed.

Summing up the above, the fastest way to issue a power of attorney abroad is to contact a local notary, while the most reliable way is to contact the consular office of Ukraine. The presence of a contract on legal assistance, which cancels the apostille, speeds up and simplifies the process of issuing a power of attorney even more.

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